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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,842	07/14/2005	Lalitesh Chandra	J3677(C)	1292

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UNILEVER PATENT GROUP
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EXAMINER

MAEWALL, SNIGDHA

ART UNIT	PAPER NUMBER
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1612

NOTIFICATION DATE	DELIVERY MODE
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11/24/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

Office Action Summary	Application No. 10/521,842	Applicant(s) CHANDRA, LALITESH	
	Examiner Snigdha Maewall	Art Unit 1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Summary

1. Receipt of Applicants arguments and amended claims filed on 08/24/09 is acknowledged.

Claim 1 has been amended.

Claims 4 and 17 have been cancelled.

Claims 13-16 remain withdrawn.

Accordingly, claims **1-3 and 5-12** are under prosecution.

The following are new rejections necessitated by claim amendments.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3 and 5-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vermeer (USP 5,641,480) in combination with Doshi et al. (US PG pub. 2003/0228383 a1) and Tsuchikura (US PG pub 2003/0044368) and further in view of Solanki (US PG pub. 2003/0152585 A1).

Vermeer discloses hair care composition and hair conditioning agents see

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abstract. The reference teaches antidandruff agents as zinc pyrithione, see column 32, lines 15-17. The amount of antidandruff agent is disclosed to be from 0% to 8%, see column, 41, lines 55-57. Examples of conditioning emollient have been disclosed as basil oil and the oils can be from 0% to 10% by weight, see column 34, lines 35-36. Basil has been also known in the art as Tulsi. Various surfactants and amount are disclosed in columns 19-20. The composition can be in the form of conditioners, shampoos and antidandruff shampoo, see column 1, lines 44-46. Various cationic surfactants are disclosed in column 29, lines 5-40. Various thickening agents such as polyoxyethylene and polyoxypropylene are disclosed in column 31, lines 34-36.

Vermeer while teaching basil as emollient does not characterize basil with antimicrobial property.

Doshi discloses an herbal composition comprising ocimum sanctum which exerts antimicrobial activity against bacteria and fungus, see paragraph [0019]. Doshi also calls Tulsi as ocimum sanctum as botanical name (Example 1 on page 5). Doshi discloses that pharmaceutical composition does not contain any hazardous organic solvents, see paragraph [0062].

While Vermeer teaches zinc pyrithione to be antidandruff treating agent, the reference does not specifically teach zinc pyrithione to be an antibacterial agent.

Tsuchikura teaches on page 3, paragraph [0029] that hair cosmetic composition can utilize antibacterial zinc pyrithione with amount from 0.0001% to 10%.

Solanki while disclosing medicinal composition, establishes that basil is also referred to as Tulsi and Ocimum sanctum, see Table 1 on page 2.

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It would have been obvious to one of ordinary skill in the art at the time of instant invention to utilize the antimicrobial property of (Tulsi/basil/Ocimum sanctum) in the antimicrobial hair treating preparation of Vermeer et al. motivated by the teachings of Doshi and Solanki. It would have been further obvious to one of ordinary skill to have utilized zinc pyrithione in the composition of Vermeer et al. as antibacterial agent based on the teachings of Tsuchikura. One of ordinary would have expected the antibacterial additive effect of both tulsi oil and zinc pyrithione in the hair treatment composition of Vermeer et al.

As such, preparation of hair care composition would have been obvious to one of ordinary skill in the art at the time of instant invention with metal pyrithione and basil or Tulsi oil in view of the teachings of Vermeer, Doshi, Tsuchikura and Solanki, thus one of ordinary would have had reasonable expectation of success in preparing the claimed hair treatment composition. Since the amount of tulsi oil and zinc pyrithione is overlapping (with that of claimed amount) in the prior art, one of ordinary skill would expect the fractional inhibitory concentration to be same as claimed absent evidence to contrary. Regarding the limitation of the composition being rinse off product, cream or conditioner , it is the position of the examiner that intended use of the composition does not hold patentable distinction from the prior art.

4. Claims 1-3 and 5-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuchikura (US PG pub 2003/0044368) in combination with Doshi et al. (US PG pub. 2003/0228383 a1) and Solanki (US PG pub. 2003/0152585 A1).

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Tsuchikura teaches on page 3, paragraph [0029] that hair cosmetic composition can utilize antibacterial zinc pyrithione with amount from 0.0001% to 10%. Tsuchikura teaches basil oil (0.6%) in example 14 on page 10. Various surfactants (0.05 to 30%) are disclosed on page 3, paragraph [0038, 0039]. Cationic polymer is disclosed in paragraph [0045] with amount from 0.01 to 30%.

Tsuchikura does not characterize basil oil as antibacterial in nature.

Doshi discloses an herbal composition comprising ocimum sanctum which exerts antimicrobial activity against bacteria and fungus, see paragraph [0019]. Doshi also calls Tulsi as ocimum sanctum as botanical name (Example 1 on page 5). Doshi discloses that pharmaceutical composition does not contain any hazardous organic solvents, see paragraph [0062].

Solanki while disclosing medicinal composition, establishes that basil is also referred to as Tulsi and Ocimum sanctum, see Table 1 on page 2.

It would have been obvious to one of ordinary skill in the art at the time of instant invention to utilize the antimicrobial property of (Tulsi/basil/Ocimum sanctum) in the antimicrobial hair treating preparation of Tsuchikura motivated by the teachings of Doshi and Solanki. One of ordinary would have expected the antibacterial additive effect of both tulsi oil and zinc pyrithione in the hair treatment composition of Tsuchikura. Since the amount of tulsi oil and zinc pyrithione is overlapping (with that of claimed amount) in the prior art, one of ordinary skill would expect the fractional inhibitory concentration to be same as claimed absent evidence to contrary. Regarding the limitation of he

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composition being rinse off product, it is the position of the examiner that intended use of the composition does not hold patentable distinction from the prior art.

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

CITED AS INTEREST

*Note: Instant specification in paragraph [0014] states that Tulsi oil is obtained from the Holy Basil plant, Ocimum sanctum and is **known** to have beneficial antimicrobial and/or insecticidal properties. Tulsi oil is typically extracted from the leaves of the plant.*

USP 6503517, 6306412, 6270783 and 6197306 have been cited as interest for cosmetic composition comprising tulsi oil with application in hair treatment.

Response to Arguments

5. Applicant's arguments with respect to claims 1-3 and 5-12 have been considered but are moot in view of the new ground(s) of rejection.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Snigdha Maewall whose telephone number is (571)-272-6197. The examiner can normally be reached on Monday to Friday; 8:30 a.m. to 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-0580.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

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have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Snigdha Maewall/

Examiner, Art Unit 1612

/Gollamudi S Kishore/

Primary Examiner, Art Unit 1612